



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

The landlord has made an application for an order to end the tenancy early, pursuant to section 56 of the *Residential Tenancy Act* ("Act"). In addition, they seek to recover the cost of the application filing fee pursuant to section 72 of the Act.

The landlord and a witness attended the hearing on September 9, 2021 at 9:30 AM. Both the landlord and the witness were affirmed before they testified. Neither tenant attended the hearing which ended at 9:48 AM.

Based on evidence provided by the landlord – comprising two Canada Post registered mail receipts and tracking numbers, which indicated that the Notice of Dispute Resolution Proceeding package was mailed to the tenants but not retrieved – it is my finding that the tenants were served in compliance with Act and the *Rules of Procedure*. That the tenants failed to pick up their registered mail does not render service unsuccessful, and they are deemed to have been duly served.

Issues

1. Is the landlord entitled to an order under section 56 of the Act?
2. Is the landlord entitled to recover the filing fee cost under section 72 of the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on May 1, 2021. Monthly rent is \$1,400.00 and the tenants paid a \$700.00 security deposit and a \$700.00 pet damage deposit. There is in evidence a copy of a written tenancy agreement.

The landlord brings this application to end the tenancy early for the following reasons (reproduced as written in the application for dispute resolution):

Based on numerous complaints from other tenants and neighbors about loud noises and vulgar smells I performed an inspection. I found my brand new kitchen was destroyed. Neighbors are complaining about traffic and drug use. garbage has been spilling to common areas and causing tripping hazards. there dog is neglected and goes to the washroom on the deck witch falls threw onto tenants and there personal belongings. there are too many kids in one room and garbage is all through out the house.

In support of this application, the landlord's witness testified that they live in one of the rental units in the building that contains the tenants' rental unit. The witness lives below the tenants. The witness has been living there for about a year and a half, and with their family. Apologizing for being tired, the witness explained that they had slept very little last night, as one of the tenants was yelling at his children at 2 AM. The yelling tenant uttered the phrase "I'm going to beat your ass!" This phrase is apparently a favourite of the tenant. However, the screaming and yelling occurred earlier in the day, and the tenants regularly yell and scream at all hours of the day and night.

The witness further testified that, more recently, the upstairs tenants have begun to smoke cigarettes, and the smoke is wafting down to the witness', and others', rental units. This, despite a no smoking policy in the property. There is a foul smell emanating from the various garbage and detritus that the tenants have left to accumulate around the property. This includes some old mattresses that have been left outside for three or four months, and which are becoming rather gross in the rain.

Continuing, the witness gave evidence that the tenants' dog defecates on the deck (which acts also as a covered walkway above the witness' entryway), and the dog's urine drips down through the boards. While the tenants appear to gather up the dog's feces into bags, they then apparently toss the bags of feces over the side of the deck onto the yard.

Last, the witness testified that while they heard of some drug activity going on, they are not involved in that and do not know much in terms of any details. There is, however,

“lots of drinking” and the tenants have tossed various cans and bottles everywhere. Indeed, the noise and disruptions have gotten so bad that another long-term tenant ended up leaving.

Submitted into evidence are numerous photographs of the interior and exterior of the rental unit.

Analysis

Section 56 (1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56(1), I must be satisfied that, pursuant to section 56(2) of the Act:

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - (iii) put the landlord's property at significant risk;
 - (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
 - (v) caused extraordinary damage to the residential property, and

- (b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

In this case, the witness' undisputed testimony more than persuades me that the tenants have significantly interfered with and unreasonably disturbed another occupant of the property. The litany of frequent screaming and yelling at all hours of the day (enough to cause sleep deprivation), the permitting of a dog to urinate through a deck onto another tenant's common area, the tossing of bags of feces onto the lawn, the accumulation of foul-smelling garbage, and the more recent cigarette smoking, all leads to the inevitable finding that this tenancy must end. It would, I find, be both unreasonable and unfair to the landlord, and especially to the other occupants of the residential property, to have to wait for a notice to end the tenancy under section 47 of the Act (a One Month Notice to End Tenancy for Cause).

Thus, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their application for an order ending the tenancy early.

Pursuant to section 56(1)(a) of the Act, it is hereby ordered that the tenancy is ended, effective immediately. Further, pursuant to section 56(1)(b) of the Act, the landlord is granted an order of possession of the rental unit. This order of possession is issued in conjunction with this decision, to the landlord. As explained during the hearing, the landlord is required to serve a copy of the order of possession on the tenants. Service may be made by any of the permitted methods listed in [section 88](#) of the Act.

Last, in respect of the landlord's claim to recover the cost of the application filing fee, section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As this tenancy has now ended, I authorize the landlord to retain \$100.00 of the tenants' security deposit to recoup the cost of the application filing fee.

The remainder of the security and pet damage deposits must be dealt with in compliance with [section 38](#) of the Act. And, as briefly explained to the landlord, they may file a separate application for dispute resolution seeking compensation.

Conclusion

I HEREBY:

1. grant the landlord's application;
2. order that the tenancy is ended effective immediately;
3. authorize the landlord to retain \$100.00 of the tenants' security deposit; and,
4. grant the landlord an order of possession, which must be served on the tenants and which is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 9, 2021

Residential Tenancy Branch